IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25/03/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR

W.P. No.1235 of 1996 and W.P.No. 8809 of 1996

W.P. No.1235 OF 1996

T. Rajendran ..... Petitioner

-Vs-

1. The Secretary
Tamil Nadu Public Service Commission
Madras-2
2. The Director
Medical and Rural Health Services
Madras
3. The Collector
Salem District
Salem ..... Respondents

W.P. No.8809 OF 1996:

T. Rajendran ..... Petitioner

:versus:

1. The Collector
Salem District
Salem
2. The Inspector of Police
C.M.C.I.D. Salem ..... Respondents

Petitions under Art.226 of the Constitution of India
praying of the Writ of Certiorari as stated in the petitions

For Petitioner :: Mr. S. Doraisamy

For Respondents :: Mr. Paul Vasanthakumar
for TNPSC
Mr. P. Chandrasekaran
Spl. Govt. Pleader

:ORDER

This judgment will dispose of W.P. No.1235 of 1996 and W.P. No.8809 of 1996 as the subject as well as the parties are common.

2. In W.P. No.1235 of 1996, petitioner challenges the order dated 23-1-1996 vide Memorandum No.3075/OTD-A1/1995. By this order, the Tamil Nadu Public Service Commission (in short TNPSC) has held that the petitioner has produced a bogus community certificate suggesting that he belonged to Konda Reddy Community, which is a Scheduled Tribe community and on that basis he sought recruitment to the post of Assistant Surgeon (Special Recruitment). On the basis of this finding, petitioners selection was cancelled.

3. In the other writ petition (W.P. No.8809 of 1996), petitioner challenges the communication between the Collector, Salem District and TNPSC dated 30-8-1995 vide Na.Ka. No.284036/93 D-15 whereby, the Collector informed TNPSC that the certificate produced by the petitioner before TNPSC purported to have been signed by one Thiru T. Kaliaperumal was not in reality signed by him and as such the certificate was a bogus one.

4. Petitioner was certified to be Konda Reddy by the Thasildhar by certificate dated 7-6-1974. On that basis, probably, he sought admission to the M.B.B.S. course. This certificate was sought to be enquired by the Sub- Collector on 16-12-1983 in his proceedings No.Na. Ka.No.1227/83 (D). According to the petitioner, this enquiry was closed after finding that he belonged to Konda Reddy community. There was again an enquiry initiated by the Revenue Divisional Officer on 2 5-6-1987 in proceedings No.Na.Ka.284036/83-D-10. However, according to the petitioner, this enquiry also was closed after finding that he belonged to Konda Reddy community. Similarly, there was a third exercise to examine the certificate on 13-11-1987, which was also closed according to the petitioner.

5. Petitioner passed his M.B.B.S. degree ultimately in the year 198 8 and, on the basis of his caste, was appointed on 31-3-1990 in the post of Civil Assistant Surgeon. He continued to be on duty in that post from 1990. Petitioner further alleged that while in service, again he was called for an enquiry on 28-1-1991 vide the proceedings No.Na.Ka.No.284036/83. According to him, he participated in the enquiry and the same was closed after being satisfied about his caste. Petitioner further points out that ultimately he received a show cause notice dated 14-8-1995 in proceedings No.Na.Ka.284036/83/D15 to show cause why the community certificate should not be cancelled for which, the petitioner filed a writ petition (W.P. No.12870 of 1995) in which all further proceedings were stayed in W.M.P. No.20596 of 1995 by the order dated 20-9-1995. Obviously all these proceedings were in respect of the caste certificate dated 7-6-1974.

6. It seems that in the meantime, in the year 1994, TNPSC called for the applications for the post of Assistant Surgeon (Special Recruitment) and for that purpose a written examination was held on 17-12-1 994 and 18-12-1994 which the petitioner claims to have passed. He was accordingly called for the interview by communication dated 7-3-199 5, was interviewed on 29-3-1995 and therein he was requested to produce amongst the other documents, a community certificate from the competent authority, viz. from the Thasildhar of the Head Quarters/ Deputy Thasildhar or from the independent Deputy Thasildhar or from the Panchayat Union Commissioner, the attested copy of which was sent by him. He then claims that he produced all the certificates. The results were ultimately declared on 28-4-1995 but his result was withheld. He, therefore, filed a writ petition (W.P. No.14921 of 1995) which was admitted on 1-11-1995.

7. However, on 17-11-1995, by Memorandum No.3075/OTD/A1/1995, TNPSC issued a show cause notice against him stating therein that the community certificate produced by him was a bogus certificate. Though the petitioner has not so stated, it is obvious from the contents of paragraph 6 of the affidavit that in the meantime, he had obtained another community certificate from the Revenue Divisional Officer, Mettur dated 27-10-1988 in support of his claim. It is clear that it was only this certificate dated 27-10-1988, which he had produced before the TNPSC in support of his caste status when he appeared for the examination for the post of Assistant Civil Surgeon. It seems that that certificate was found to be bogus on enquiries having been made by TNPSC from the Collector and, therefore, the show cause notice came to be issued as to why the action should not be taken against the petitioner and he should not be debarred permanently. It is the claim of the petitioner that he has given an explanation on 27-11-1995. TNPSC, however, by its order dated 23-1-1996, rejected the explanation and proceeded to take the action as has been stated above. W.P. No.1235 of 1996 is for that purpose.

8. It seems that from the order of the TNPSC the petitioner

came to know about the communication of the Collector whereby the Collector had informed that the certificate dated 27-10-1988 was a bogus one and, therefore, he filed another writ petition (W.P. No.8809 of 1996) wherein he challenged the said communication of the Collector dated 3 0-8-1995, bearing No.284036/83(D-15). He challenged this on the ground that the petitioner was given no opportunity before making that communication.

9. Learned counsel for the petitioner, Shri Doraisamy, appearing in both the writ petitions, vehemently urged that this was a case where the petitioner's caste claim was set aside and quashed and on that basis the action against him was initiated behind his back. He pointed out that the order of Thasildhar challenged in W.P. No.1235 of 199 6 was completely based on the communication by the Collector dated 23 -1-1996 and before giving that communication the Collector gave no opportunity to the petitioner in any manner to substantiate that certificate dated 27-10-1988.

10. As against this, learned counsel for TNPSC and the learned Special Government Pleader supported both the orders. As regards the order passed by TNPSC, the learned counsel appearing for TNPSC specifically pointed out that TNPSC has given a proper opportunity to the petitioner before taking any action against him. Learned counsel is at pains to point out that two certificates came to be produced by the petitioner one dated 7-6-1974 issued by the Thasildhar, Mettur and the other dated 27-10-1988, issued by the Revenue Divisional Officer, Mettur. It was pointed out that the certificate dated 7-6-1974 issued by the Thasildhar was not correct as the Director of Medical Education had got that certificate enquired into through the Collector, Salem and on enquiry conducted by the Sub Collector, it was found that the claim of the petitioner that he belonged to "Konda Reddy" community was false and that an action was already pending for cancelling the community certificate dated 7-6-1974. Learned counsel pointed out further that the second certificate dated 27-10-1988, regarding which the petitioner has chosen to remain silent in his petition, was actually a forged certificate as firstly it was not signed by the officer whose signature was purported to be on the certificate.

11. Learned counsel also points out that the certificate was issued under the "Permanent Caste Card" system (Green Card) but bore a date of 27-10-1988. Learned counsel pointed out that in his report, the Collector had specifically mentioned that the system of Permanent Caste Card was introduced in Mettur Division only from the year 1990 and as such, there could not have been any permanent caste card issued on 27-10-1988. Learned counsel also pointed out that it was obvious that the certificate was a manufactured one. Learned counsel, therefore, urged that no fault could be found on the part of TNPSC in acting upon the report of the Collector and consequently taking the disciplinary action of debarring him permanently from appearing any of the examinations conducted by the Commission and cancelling his selection also.

12. Learned Special Government Pleader also supported the order of the Collector and submitted that this was a case where there was no question of giving any opportunity to the petitioner because the Collector had merely reported to the Commission regarding the bogus nature of the community certificate dated 27-10-1988. He pointed out that the Collector had still not cancelled the certificate dated 7-6-1974 obtained by the petitioner probably because of the pendency of the writ petition (W.P. No.12870 of 1995). Learned counsel pointed out that very significantly because of the pendency of that writ petition and the present writ petitions, even the criminal prosecution which was going on against the petitioner was stayed by this Court. Learned counsel further pointed out that the criminal action was initiated on account of his forgery in obtaining the certificate dated 27-10-1988 and if a document submitted by the petitioner to TNPSC appeared to be a bogus document, the action taken by the Commission was correct. Learned Special Government Pleader also submitted that the writ petition did not lie against the Collector□s report because that was merely a report and amounted to a interdepartmental correspondence.

13. On this conflicting backdrop, it is to be seen as to whether firstly the Collector was justified in reporting the matter to TNPSC as he did and whether TNPSC was justified in taking the action as it did.

14. It is obvious from the facts that the Collector□s report, which is relied upon by TNPSC was in pursuance of the query made by TNPSC itself and, indeed, no fault could be found with TNPSC for making the query regarding the correctness of the certificate dated 27-10-1988. It was duty-bound to enquire into the documents and, therefore, was fully justified in making a reference to the report. In fact, in its show cause notice itself, TNPSC had pointed out that it had referred the certificates dated 7-6-1974 and 27-10-1988 to the Collector. The Collector based his report in so far as the certificate dated 7-6-1974 is concerned on the report of the Director of Medical Education who had intimated that the Sub Collector of Mettur had found that the status of Scheduled Tribe claimed in that certificate was incorrect and that the petitioner did not belong to the □Konda Reddy□ community.

15. As regards the certificate dated 27-10-1988, however, the Collector was specific that the said certificate was a forged one as it was not signed by Thiru T. Kaliaperumal, the then Revenue Divisional Officer, Mettur. Therefore, I do not find anything wrong in the action taken by TNPSC, which had given a full opportunity to the petitioner before taking any action. The correctness of the order will, however, depend upon the finding of fact regarding the incorrect claim made by the petitioner regarding his caste via the certificate dated 7-6 -1974 and the fraudulent nature of the certificate dated 27-10-1988.

16. It is significant to note that the last enquiry regarding

the cancellation of the caste claim in the certificate dated 7-6-1974, which is instituted on a show cause notice dated 14-8-1995, has been stayed by this Court. That enquiry was initiated at the instance of the Director of Medical Education, who, by his letter dated 18-12-1982, had sought the examination of that claim and the genuineness of that certificate. It is obvious that that exercise was either not completed or, probably, was not allowed to be completed. I am at a loss to understand as to why was the enquiry not completed though the Director of Medical Education had initiated the same before the Collector, Salem as back as on 18-12-1982 vide letter No.10666/ME(4)82. It seems that the Collector on that basis had got the report from the Sub Collector/Revenue Divisional Officer, Mettur who found that the petitioner was not a Konda Reddy. It is for that reason that the proceedings for cancellation of that certificate were initiated which proceedings have been stalled by the petitioner by filing a writ petition (W. P. No.12870 of 1990). I will, therefore, not go into the correctness or otherwise of the certificate dated 7-6-1974 because the cancellation proceedings of the same are already pending. However, the same cannot be stated about the certificate dated 27-10-1988. It is obvious that that certificate is a manufactured one because it is very specifically stated by the Collector that firstly the certificate dated 27 -10-1988 was never signed by Thiru T. Kaliaperumal, who has refused to acknowledge his signature with a specific statement that he had never issued any community certificate to anybody when he was working as Revenue Divisional Officer, Mettur. The Collector has also pointed out in his report that in Mettur division, the system of Permanent Caste Certificate (Green Card) was introduced only from the year 1990 whereas, this certificate bore the date 27-10-1988. This suggests that the certificate dated 27-10-1988 was clearly a manufactured one.

17. In this behalf, there is a charge sheet filed against one K. Chandrasekaran and others that they had fabricated bogus □Konda Reddy□ community certificates on □green cards□, misusing the fascimile signature of Thiru T.Kaliaperumal while the petitioner and three other accused persons purchased those fabricated caste certificates from him and the petitioner is one of the accused persons who are being proceeded against for offences under Secs.464, 466, 467 and 468 IPC. It is further stated in the charge sheet that the petitioner and the other accused persons got themselves admitted on the basis of the bogus caste certificate to the professional courses and the petitioner had produced the bogus community certificate to TNPSC also for occupying the Government service on the basis of the caste status and that the petitioner also got appointed in Tamil Nadu Medical Service by producing the bogus □Konda Reddy□ community certificate. It is, therefore, clear that at least in so far as the certificate dated 27-10-1988 is concerned, there is a criminal prosecution going on against the petitioner on that account. If that is so, the stand taken by the TNPSC and the action by the TNPSC cannot be faulted.

18. Mr. Doraisamy, however, pointed out that the whole action depended upon the report of the Collector which was given without hearing the petitioner. In my opinion, it was not at all necessary for the

Collector to hear the petitioner in this matter. That could have been an □useless formality□. The Collector was armed with the statement of Thiru T. Kaliaperumal and also the fact that the system of issue of Permanent Community Certificate (Green Card) was introduced in Mettur Division only in the year 1990 and yet, the petitioner had produced the community certificate on the □Green Card□, which was dated 27-10-1988.

19. The Hon□ble Supreme Court in ALIGARH MUSLIM UNIVERSITY AND OTHERS v. MANSOOR ALI KHAN (2000 7 SCC 529) has referred to such an □ useless formality□. After all, one cannot forget that a criminal prosecution has already been launched against the petitioner on the basis of that certificate which the petitioner could not disown. It is really unfortunate that the petitioner went on filing petition after petition and successfully scuttled all the efforts to displace him from the medical college as also the Government service in the Medical Department and so also has been successful in getting the criminal prosecution stayed. Once it is held that hearing of the petitioner was an □useless formality□ in the peculiar circumstances of the case then the very basis of the challenge to the Collector□s report is knocked of. It will be seen that the petitioner had filed that petition only against the Collector□s report and the only ground of challenge was that he was not given an opportunity. He was resourceful enough to get the try typed copy of the Collector□s report and to file the same in W.P. No.8809 of 1996.

20. Mr. Doraisamy tried to argue that in one other case a certificate signed by Thiru T. Kaliaperumal and used by one Uma Rani dated 27 -7-1989 bearing No.388011 was found to be a good certificate by one A. Sathyamoorthy, Revenue Divisional Officer, who had succeeded the said T. Kaliaperumal. I am not concerned with that matter here because that certificate is not in question before me.

21. There can be no dispute and it was indeed not challenged and could not be challenged by the petitioner that the system of Permanent Community Certificate (Green Card) was introduced in the Mettur Division for the first time in the year 1990 and, therefore, there could not be a certificate on Green Card bearing the date of 27-10-1988. Under the circumstances, the claim of the petitioner that he should have been given an opportunity to cross-examine Thiru T. Kaliaperumal appears to be baseless. The Collector was not under any such duty while reporting the matter to TNPSC. The action has already been initiated in the criminal court vide the charge sheet in C.C. No.688 of 1999 and the petitioner has been resourceful enough to get that prosecution stayed. It is hoped that the authorities would take proper steps now in that behalf to complete the prosecution. Under such circumstances, there will be no question of entertaining both the writ petitions.

22. Before parting, I must express my consternation that the enquiry into the correctness of the caste claim of the petitioner should not

have seen its finality though his status as a Scheduled Tribe was challenged in the year 1982. It is hoped that that enquiry is finalised and the caste status of the petitioner is decided finally. That would at least avoid the further complications. This is extremely important in view of the fact that if the petitioner is really not a Scheduled Tribe then, it would mean that he had eaten up one seat meant for a genuine Scheduled Tribe candidate and has also served on the basis of his M.B.B.S. degree to which he perhaps might not have been entitled at all had he not claimed the status of the Scheduled Tribe. Not only this thereafter also it is obvious that the petitioner kept on serving the Government on the basis of his caste claim. That also could have been avoided had the enquiry been completed in time. The Government can even now get the said certificate dated 7-6-1974 verified from the High Level Caste Scrutiny Committee, which is now in existence and which is helped by the experts in that behalf. In my opinion, nothing would stop the Government to initiate the enquiry, at least now, into the genuineness of the certificate dated 7-6-1974 because, there is no question of limitation or finality attached to any such certificate.

23. With these observations, the writ petitions are dismissed. Connected W.M.P. Nos.1938 and 12014 of 1996 are closed. No costs.

Index:Yes
Website:Yes
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To:
1. The Secretary
Tamil Nadu Public Service Commission
Madras-2

2. The Director
Medical and Rural Health Services
Madras

3. The Collector
Salem District
Salem